THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5291 of 2004

Date of Decision: 15 - 9 - 2006

Paramjit Singh **.....Petitioner**

v.

Amarjit Singh Walia and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Deepak Arora, Advocate
for the petitioner.

Mr.B.R.Mahajan, Advocate
for respondent No.1.

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P.S.PATWALIA, J.

The present revision petition has been filed challenging orders dated 4.9.2004 rejecting an application filed by the petitioner-tenant for leave to defend an application filed under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as, `the Act') as also order passed on the application under Section 13-A of the Act ordering ejectment of the petitioner-tenant.

The brief facts of the case are that the landlord, respondent in this revision petition, filed an application under Section 13-A of the Act seeking ejectment of the petitioner-tenant from the demised premises on 18.3.2002. Notice of the said application was issued for 2.5.2002. According to the report submitted regarding service on 10.4.2002 service was effected by affixation on that date. However, the Rent Controller ordered fresh service for 1.6.2002. According to the

report submitted to the Rent Controller, the petitioner-tenant refused to accept service on 21.5.2002. Thereafter the Rent Controller directed service by munadi and fixed the date of hearing as 9.8.2002. Munadi was effected on 4.7.2002. An application for leave to defend was filed on 9.8.2002 by the petitioner-tenant which was allowed by the Rent Controller on 29.4.2003. Leave to defend was granted by the Rent Controller by observing that the objection with regard to maintainability of the application for leave to defend and the objection with regard to limitation would be decided afterwards. Against this order, the landlord filed Civil Revision No.2565 of 2003 in this Court. The revision petition was allowed. Order of the Rent Controller dated 29.4.2003 was set aside and the Rent Controller was directed to decide the application for leave to defend afresh.

It is in the light of the aforesaid direction that the Rent Controller has again considered the matter. The application for leave to defend was rejected on the ground that it was filed beyond a period of 15 days prescribed under Section 18-A of the Act. Thereafter the application under Section 13-A of the Act filed by the landlord was taken up for consideration on the same day. The same was allowed and the petitioner-tenant was directed to hand over vacant possession of the premises in dispute to the landlord within a period of one month from the date of order dated 4.9.2004. The present revision petition has been filed challenging the aforementioned two orders of the Rent Controller.

Before considering the merits of the controversy, it would be appropriate to reproduce the orders made by the Rent Controller on 18.3.2002, 2.5.2002, 1.6.2002 and 9.8.2002 on an application filed by the landlord for vacation of ex parte stay order granted by this Court which are as hereunder:-

> “Present: Counsel for the applicant.
>
> Petition be registered. Notice to the respondent be issued for 2.5.2002 on filing PF.
>
> Sd/- RC 18.3.2002

Present: Counsel for the applicant.

Notice against the respondent not received. Let notice to the respondent be again issued for 1.6.2002.

Sd/- RC 2.5.2002.

Present: Counsel for the applicant.

Respondent has refused to accept the service. I am satisfied that respondent cannot be served through ordinary manner. Let respondent be serviced high substituted service by way of beat of drum and affixation for 9.8.2002 on filing of PF and Munadi charges.

Sd/-RC 1.6.2002.

Present: Counsel for the applicant.

Respondent appeared through Sh.Mayank Joshi, Advocate and filed an application for permission to leave to defend the application filed by the applicant. Application is supported by an affidavit. Copy has been supplied for filing its reply and consideration. To come up on 21.8.2002.

Sd/- RC 9.8.2002."

The report of Process Server dated 10.4.2002 when summons were sent for 2.5.2002 as translated and reproduced in the application filed by the landlord for vacation of ex parte order reads as under:-

"Sir, It is submitted that I went to the spot repeatedly and made enquiries about Harbans Singh son of Atma Singh. On repeated visits, after making enquiries about the date of hearing on the summons, he disappears. One copy of summon alongwith a copy has

been affixed at his house but neighbours are not prepared to witness the same.

Sd/-Harbans Singh, 10.4.02."

Similarly the report dated 21.5.2002 on summons sent for 1.6.2002 made by the Process Server when translated into English reads as hereunder:-

"Sir, It is submitted that after reaching House No.4696, Guru Nanak Wara, P.O. Khalsra College, Harbans Singh son of Atma Singh was asked to receive the summons but Harbans Singh kept the summons and copy but refused to give receipt receiving the summons. Report is submitted.

Sd/- Hari Ram, P.S. 21.5.02."

On the summons sent for 9.8.2002 for effecting service by Munadi, the report made by the Process Server on 4.7.2002 reads as hereunder:-

"Sir, It is submitted that for getting effected Munadi at the spot, I reached H.No.4696 Guru Nanaka Wara, PO Khalsa College, Amritsar., Munadi was got done from Munadi Karinda Jaimal Singh through Teen (Pipa) and in loud voice to the effect that Harbans Singh son of Atma Singh is required to appear in the court of Shri Kishore Kumar C.J.M. Amritsar on 9.8.02 at 10.00 A.M. personally or through counsel and on his failure exparte proceedings will be taken against him. Munadi fee of Rs.20/- at the spot and one page of notice has been affixed at the spot.

Report is submitted.

Vijay, P.S. 4.7.02

Jaimal Singh, Munadiwala

H.No.1120/20, Gali No.399

Ram Tirath Road, Amritsar."

It is in the light of the aforesaid orders and the reports submitted by

the Process Servers that the first question that arises for consideration is as to whether or not the application for leave to defend was filed within a period of 15 days from the time when the tenant was duly served. A reading of the report dated 21.5.2002 shows that Harbans Singh son of Atma Singh the tenant was asked to receive the summons. He kept the summons and the copy but refused to give the receipt. This service on 21.5.2002 was effected for 1.6.2002. On 1.6.2002 the Rent Controller noted that the respondent had refused to accept service and then ordered substituted service by way of munadi. Again report dated 4.7.2002 regarding munadi is very clear. In fact even the earlier report dated 10.4.2002 when summons were sent for 2.5.2002 also shows that one copy of the summons was affixed at the house of the tenant.

After going through the reports and the zimni orders made by the Rent Controller, I am of the opinion that Harbans Singh tenant stood served on 21.5.2002 when he kept a copy of the summons and refused to give receipt. In any case he was again served by munadi on 4.7.2002.

While considering the question whether or not due service was effected on the tenant it also deserves to be mentioned that in his application for leave to defend he has made the following averments regarding service:-

> "2. That no proper and valid service has been effected upon the respondent as per the provisions of Section 18-A of East Punjab Urban Rent Restriction Act, 1949. The respondent was neither served in ordinary manner nor through Regd-Ad-post or through affixation of summon, under one of the different mode of service mentioned in section 18-A. The respondent never refused to accept service, nor any process server ever came to effect the service of the respondent in ordinary manner nor through munadi (by way of drum beat and fixation of summons as well as copy of application.)
>
> 3. That the respondent came to know regarding the pendency of the

> application only on yesterday evening i.e. 8.8.2002 from the relative of the applicant who is residing near the property in dispute, who disclosed the whole story of the applicant and told about the pendency of the application."

A reading of these averments inspire absolutely no confidence regarding the veracity of the statement made therein. It appears to be a made up story by the tenant.

Under these circumstances the question that arises is as to what would be the effective date of proper service on the tenant. Learned counsel for the respondent-landlord relied upon a judgment of the Hon'ble Supreme Court in **M/s. Gurbax Singh v. Punjab Mandi Board**, AIR 2004 SC 1269 to contend that even if subsequently service was ordered to be effected by way of munadi but when the respondent refused to accept the service on 21.5.2002 that would be the effective service. The facts of that case are as hereunder:-

> "3. A copy of the signed award was despatched to both the parties on 28-10-1991 by the arbitrator with a direction to file the same before an appropriate Court to make the same rule of the Court. The appellant herein on 29-10-1991 filed the award in the Court of the Additional Senior Sub-Judge, Sultanpur Lodhi, which Court issued a notice of the filing of the said award on 30-10-1991 to the respondent herein. Though the said notice mentioned the next date of hearing as 24-12-1991, as per Art. 119 of the Limitation Act the respondent had to file its objections if any, within 30 days from the service of notice. As per the postal endorsement received by the Court the said notice of the Court was sought to be served on the respondent on 6-11-1991 but the same was refused to be accepted hence a deemed service came to be effected. Consequently, the respondent became liable in law to file its objections on or before 6-12-1991 i.e. within 30 days

from the date of deemed service. On 30-10-1991 along with a fresh notice by substituted service to the respondent herein, a notice was also issued to the arbitrator who was impleaded as second respondent to the application filed by the appellant to make the award a rule of the Court."

Ultimately the Hon'ble Supreme Court holds as hereunder:-

"13. Learned counsel then contended that the notice dated 13-10-1991 issued by the Court was recalled by it on 24-12-1991 and a fresh notice was issued on that day which would give the respondent 30 days' time from that date which will be uptill 23-1-1992 and the respondent having filed its objections on 18-1-1992 the same was within time hence the trial Court was legally bound to have considered the said objections. We do not think that we can agree with this argument of the learned counsel also. We have already extracted the two orders of 24-12-1991 hereinabove and if we peruse the same once again we notice that the Court on 24-12-1991 has not recalled its notice issued on 30-10-1991 by either of the two orders made on 24-12-1991. By the first order of that day, it placed the second respondent arbitrator ex parte. It also noticed the fact that respondent No.1 who is also respondent herein but had refused process hence it had ordered a substituted service by way of publication. That issuance of a fresh notice by substituted service would not take away the effect of a deemed service which was effected on the respondent on 6-11-1991. For the purpose of Art. 119 of the Limitation Act, 1963 the date of service will have to be taken as the first service effected. In the instant case it cannot be legally disputed that the service effected on 6-11-1991 was not an effective service. If that be so the limitation of 30 days would start

> from that day namely 6-11-1991. Even the second order of 24-12-1991 does not make the issuance of notice by the Court on 30-11-1991 ineffective. Therefore, this argument of learned counsel would also fail."

A reading of the portion extracted hereinabove would show that the Hon'ble Court held that notwithstanding the issuance of a fresh notice by substituted service, the effect of the earlier service when summons were refused would not be nullified. In the light of the aforementioned principle laid down by the Hon'ble Supreme Court, the tenant was duly served on 21.5.2002. Thus the application for leave to defend was filed beyond the period of limitation. It has therefore been rightly declined by the Rent Controller.

Learned counsel for the petitioner has relied upon the judgments of this Court in **Shri Sham Lal v. S. Bhagat Singh**, (1991)1 PLR 253 and **Sukhbir Singh v. Mansa Ram and others**, 1993(1) PLR 149. I have gone through the said judgments. The facts of those cases are totally different and have no application to the present case. Learned counsel has also relied upon a judgment of this Court in **Anil Kumar Sharma v. Jagdish Pal and another**, 1992(1) PLR 90. The said judgment is also based on the facts of its own case. In the present case after going through the orders passed by the Court, the report made by the Process Server and the stand taken by the tenant in the application for leave to defend, it clearly emerges that the tenant stood duly served on 21.5.2002 and in any case was again served on 4.7.2002 and hence the order made by the Rent Controller declining the application for leave to defend warrants no interference.

After declining the application for leave to defend, the Rent Controller considered the application under Section 13-A of the Act filed by the landlord for eviction of the tenant. Relevant part of para 3 of the said order reads as hereunder:-

> "3. I have heard the learned counsel for the parties and have gone

through the relevant provisions of law as well as through the file carefully. As per section 13-A of the East Punjab Urban Rent Restriction Act, if there is any specified landlord, the ejectment order is to be passed. The perusal of documents i.e. certificate of Govt. of India produced on file by the applicant shows that the applicant was a public servant being in Govt. duty and has retired on 28.2.2003. The site plan, the rent note and receipts etc. have also been proved on file showing that the respondent is a tenant under the applicant. Accordingly, as the leave to defend has already been declined to the respondent, the applicant having retired from service by now, is entitled to seek the eviction of the respondent. Hence, the application is allowed. ..."

A reading of the aforementioned paragraph would show that the Rent Controller on perusing the documents found that the landlord was a public servant who had retired on 28.2.2003. The rent note showed that the respondent in the application was a tenant. Accordingly, his eviction was ordered. I find no error in this order as well.

Consequently, the revision petition is dismissed. The petitioner-tenant would now hand over vacant possession of the premises to the respondent-landlord within a period of two months from today.

(P.S.PATWALIA)
JUDGE

September 15th, 2006.

RC